



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 18, 1994

Mr. George M. Kirk
Gottesman, McAllister & Kirk, P.C.
8 Greenway Plaza, Suite 802
Houston, Texas 77046

OR94-449

Dear Mr. Kirk:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 26173.

The Smithville Independent School District (the "district"), which you represent, has received a request for "correspondence regarding [Texas Association of School Board's] reply to Mr. Edwards stating legal stand on grade changing . . . [as well as] any relating correspondence, documents, etc. from any legal remedies concerning this matter." You interpret this request to seek two different categories of information: first, "correspondence regarding TASB reply to Mr. Edwards stating legal stand on grade changing" and second, "any relating correspondence, documents, etc. from any legal remedies concerning this matter." You state that the district has nothing responsive to the first request. The Open Records Act applies only to existing information. Open Records Decision No. 605 (1992) at 2.

You state that the district has one document that is arguably responsive to the second request, and you have submitted a copy of that document for our review. As you described the document in your letter to us, it is a computer printout of notes that the district's director of instruction created. You explain that the director of instruction made numerous telephone calls to the Texas Association of School Boards (the "TASB") and the Texas Education Agency (the "TEA") regarding a grade changing issue that arose. Assuming that the grade changing issue about which the director of instruction communicated with the TASB and the TEA is the same as the grade changing matter about which the requestor asks, we believe that the document is responsive to the request.

You contend that the district may withhold the information pursuant to the attorney-client privilege. Section 552.107(1) of the Government Code excepts from required public disclosure

information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas[.]

This office considered the scope of the statutory predecessor to section 552.107, V.T.C.S. article 6252-17a, section 3(a)(7), in Open Records Decision No. 574 (1990). Open Records Decision No. 574 concluded that section 3(a)(7) protected only privileged material under rule 1.05 of the Texas State Bar Disciplinary Rules of Professional Conduct, *i.e.*, only factual information and requests for legal advice communicated by a client and legal advice or opinion rendered by the attorney to the client or to an associated attorney in furtherance of the rendition of legal services to the client. Open Records Decision No. 574 at 5. A governmental body invoking section 552.107 of the Government Code must explain the following:

(1) that the communication is a confidential client communication or a communication of legal advice or opinion; and

(2) that the requested information is a communication, intended to be confidential, between the client and the client's lawyer, or their representatives, for the purpose of facilitating the rendition of professional legal services.

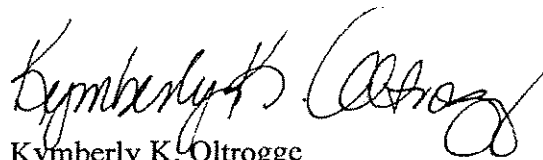
See generally Open Records Decision No. 574.

You cite Open Records Decision No. 380 (1983) to support your contention that the information you have submitted is confidential. In Open Records Decision No. 380 this office concluded that the attorney-client privilege applied to a letter, which the decision noted consisted almost entirely of legal advice, from a staff attorney for the TASB. The decision noted that the school district subscribed to a service the TASB offers under which TASB attorneys advise a school district about problem areas involving school policy. In the opinion of this office, the staff attorney was, in that situation, acting in the capacity of the attorney for the governmental body.

You have provided no evidence that the director of instruction acted as a representative of the district when she communicated with the TASB or the TEA, nor have you shown that the individuals the director of instruction communicated with in the TASB and the TEA are attorneys or representatives of attorneys. Additionally, you have not demonstrated that, at the time of these communications, the district was a client of either the TASB or the TEA. Consequently, we must conclude that the district may not withhold this information under section 552.107 of the Government Code; rather, the district must release the information in its entirety to the requestor.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/KHG/rho

Ref.: ID# 26173

Enclosure: Submitted document

cc: Ms. Betty J. McBryar
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(w/o enclosure)